

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ARNOLD FISHON, LILLY PEREZ, and
TANA PARKER on behalf of themselves
and all others similarly situated,

Plaintiff,

v.

MARS PETCARE US, INC.,

Defendants.

Civil Action No. 3:19-cv-00816
Chief Judge Waverly D. Crenshaw, Jr
Magistrate Judge Alistair Newbern

JURY DEMAND

DEFENDANT’S MOTION TO DISMISS AND TO STRIKE

Plaintiffs’ claims fail for numerous reasons. *First*, plaintiffs’ claims should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a plausible claim for relief. *Second*, plaintiffs’ claims sounding in fraud fail to satisfy the heightened pleading standard under Federal Rule of Civil Procedure 9(b). *Third*, plaintiffs fail to specify under which state laws they bring their breach of warranty (Counts II and III) and unjust enrichment (Count IV) claims. *Fourth*, plaintiffs fail to allege basic elements of breaches of the Magnuson-Moss Warranty Act (“MMWA”) (Count I), express warranty (Count II), implied warranty of merchantability (Count III), and unjust enrichment (Count IV). *Fifth*, plaintiffs cannot seek class relief under the Virginia Consumer Protection Act (“VCPA”). *Sixth*, plaintiffs’ nationwide class allegations should be stricken from the complaint under Federal Rules of Civil Procedure 12(f), 23(c)(1)(A) and 23(d)(1)(D) as they are facially defective.¹ *Finally*, plaintiffs’ claims for injunctive relief should

¹ “Under Rules 23(c)(1)(A) and 23(d)(1)(D), as well as pursuant to Rule 12(f), this Court has authority to strike class allegations prior to discovery if the complaint demonstrates that a class

be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1), as Plaintiffs lack standing to seek such relief.

This Motion is supported by the following exhibits, which the Court may properly consider under this Motion and which are attached to a contemporaneously filed Declaration:

EXHIBIT 1 Product packaging (back display panel) for IAMS® Proactive Health Sensitive Skin & Stomach Grain-Free Recipe with Chicken & Peas.

EXHIBIT 2 Product packaging (side display panel) for IAMS® Proactive Health Sensitive Skin & Stomach Grain-Free Recipe with Chicken & Peas.

A Memorandum of Law in support of this Motion has also been filed.

Dated: November 18, 2019

Respectfully submitted,

/s/Ryan T. Holt

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action cannot be maintained.” *Hovsepian v. Apple, Inc.*, No. 08-5788 JF (PVT), 2009 WL 5069144, at *2 (N.D. Cal. Dec. 17, 2009).

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on November 18, 2019, I electronically filed a copy of the foregoing with the clerk of the District Court using the CM/ECF system, which sent notification of such filing to all parties registered with the Court's electronic filing system.

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